

# CITY AND COUNTY OF SWANSEA

## MINUTES OF THE STATUTORY LICENSING SUB COMMITTEE

HELD AT COMMITTEE ROOM 2 - CIVIC CENTRE ON THURSDAY, 2  
OCTOBER 2014 AT 10.00 AM

**PRESENT:** Councillor P M Matthews (Chair) Presided

**Councillor(s)**                      **Councillor(s)**

A C S Colburn                      P Downing

**Officers:**

L Thomas                      -     Senior Lawyer  
R Westlake                     -     Senior Licensing Officer  
R Loosemore                  -     Licensing Officer  
S Woon                         -     Democratic Services Officer

**Representing Responsible Authorities:**

**P.C.** J Evans -                      South Wales Police - Applicant

**La Viva, 21 High Street, Swansea:**

A Rasool                        -     Premises Licence Holder (PLH)  
A Brain                         -     Supporting PLH  
H Rees Davies                 -     Solicitor

13     **APOLOGIES FOR ABSENCE.**

There were none.

14     **DISCLOSURES OF PERSONAL AND PREJUDICIAL INTEREST.**

In accordance with the Code of Conduct adopted by the City and County of Swansea, no interests were declared.

15     **LICENSING ACT 2003 - SECTION 53C - REVIEW OF A PREMISES LICENCE  
FOLLOWING REVIEW NOTICE UNDER SECTION 53A.**

The Senior Lawyer advising the Committee welcomed all attendees to the meeting and outlined the procedure to be adopted by the Sub Committee in considering the review. She referred to the Section 53A of the Licensing Act 2003 which required a determination to be made within 28 days following the application which meant it had to be determined by 2 October 2014 and the Hearing Regulations 2005.

The parties were reminded that if they wish to present any additional documentation at the hearing they would need the consent of the other party. The parties must keep representations relevant and as no representations had been made by the premises licence holder the Applicant may need to be given time to consider anything raised at the hearing .

The Licensing Officer reported on the review of a Premises Licence (currently suspended) under Section 53A in respect of La Viva, 21 High Street, Swansea. He referred to the copy of the summary application attached at Appendix A, policy considerations and the guidance from the Home Office.

He stated that no representations had been received.

He also stated that the licensing authority must consider i) what steps it considers appropriate for the promotion of the licensing objectives and ii) consider what steps should be taken to secure the promotion of the licensing objectives including whether the interim steps should be made permanent.

In response to a question by the Chair, the Licensing Officer confirmed that no communication had been received from Mr A Rasool.

P.C. J Evans, South Wales Police, informed Members of the reasons South Wales Police would seek for revocation of the premises licence. She referred to Section 53A of the Licensing Act 2003 in respect of an Expedited Review of La Viva, 21 High Street, Swansea on the grounds that the premises were associated with a serious crime in that a cannabis factory was discovered on the premises on 3 September, 2014.

She detailed the progress to date in respect of the police investigation. It was noted that the City and County of Swansea owned the freehold to the property which is currently leased to Mr A Rasool on a long term lease.

Mr A Rasool had attended Swansea Central Police Station on 23 September, 2014 and produced documents which indicated that the property was sub-let to another person who is yet to be interviewed. Mr A Rasool remained as a witness pending the result of forensic evidence.

She referred to guidance which stated that it was not for the Sub-Committee to establish guilt or innocence. However, there had been a serious undermining of the Licensing Objectives.

In summary, Members' noted that the premises may be sub-let unlawfully subject to the terms of the City and County of Swansea lease being clarified. The forensic evidence had not yet been received to absolve Mr A Rasool of any wrong doing. The venue was not trading and the tenant had free reign at the premises. Mr A Rasool was responsible for monitoring activity at the premises and failed to promote the Licensing Objectives. Should the South Wales Police preference for revocation of the licence not be accepted by the Statutory Licensing Sub Committee, a three month suspension was requested to allow the Police investigation into the matter.

In response to a member question, P.C. J Evans confirmed that no communication had been received from Mr A Rasool prior to 23 September, 2014.

The Solicitor representing Mr A Rasool confirmed that his client did not accept that the sub-leasing of the premises was breach of the lease. Mr A Rasool had no knowledge of criminal activity taking place and had assisted Police and would continue to do so. Mr A Rasool was attempting to track the tenant.

He referred to the possibility of a three month suspension which would allow refurbishment to improve the premises to return the building to the purpose for which it was intended.

The Solicitor representing Mr A Rasool felt that it would be premature to revoke the licence and referred to the three month suspension allowing the Police time to collate the evidence. He stated that Mr A Rasool would submit plans in terms of what he intended to do with the building. The matter could then come back to committee for a final decision.

In response to a question from the Chair, Mr A Rasool stated that his address was not at the premises and he had received no contact or been served any paperwork. He stated that paperwork had been hand delivered to 21 High Street with no stamp. Upon finding the papers he had shown his friend who made contact immediately.

The Lawyer advising the Sub-Committee stated that the Licence had been transferred to Mr A Rasool in November, 2013 and the address provided was 21 High Street, Swansea. If Mr Rasool was stating that he was not at that address on a regular basis then it was incumbent on Mr A Rasool, as premises licence holder, to provide an address where he could be contacted.

Mr A Rasool stated that he had provided the Licensing Authority with an address in November, 2013.

In response, the Lawyer advising the Committee, confirmed that the address on the Licence to transfer was La Viva, 21 High Street, Swansea and Mr A Rasool was responsible for advising of any change.

In response to a Member question, the Solicitor representing Mr A Rasool confirmed that the sub-letting of the premises was evidenced in writing and had been provided to South Wales Police.

In response to a question from the Chair, the Solicitor representing Mr A Rasool confirmed that the City and County of Swansea had not been advised that the premises had been sub-let.

In response to a questions from the Lawyer advising the Sub-Committee, Mr A Rasool stated that there were no conditions associated with the lease of the premises.

In response to a question from the Chair, Mr Rasool advised that:

- a. he had bought the property as a 'buy to let' following a request from a friend who was seeking a restaurant in Swansea;
- b. Having been unaware of the activity being undertaken at the premises he had now assessed the damage and work was being progressed at the property;
- c. The intention was that the property would be refurbished and re-let;
- d. Having been informed of the Police investigation he had responded and was advised (by his friend Mr A Brain) to wait for the Police to contact him.

The Solicitor representing Mr A Rasool stated that he had recently been instructed by Mr A Rasool, prior to his involvement Mr A Brain had been assisting Mr A Rasool.

Mr A Brain, friend of Mr A Rasool, advised that Mr A Rasool had contacted him regarding the Police discovery of a cannabis factory at the premises. He had advised Mr A Rasool to contact the Police and assist with investigations. He spoke of his difficulties in making contact with the Police and the Licensing Authority and confirmed that he had left a message on 19 September, 2014 requesting that the Licensing Officer return his call as he was representing Mr A Rasool who lived in Huddesfield.

In response to a question from the Chair, Mr A Rasool stated that he was not aware who was resident at the premises.

Mr A Brain stated that the person or persons residing at the property had installed shutter blinds at the front and rear of the building. The property would have been entered from Orchard Street and contained a couch, tv and there was evidence that the person or persons had been drinking alcohol.

In response to a question from the Chair, Mr A Rasool confirmed that he was aware of the installation of shutters at the property but unaware of the requirement for planning consent in order to install the shutters.

In response to a Member question, Mr A Rasool stated that he did not inspect the property as he had been unwell since 2010. He referred to visits to the property by estate agents.

In response to a question from the Chair, Mr A Rasool stated that the property had not operated since the eviction of the previous tenant in August 2013.

In response to questions from P.C. J Evans, South Wales Police, Mr A Brain confirmed that he was aware that P.C. J Evans had advised him that she could not discuss the matter with anyone other than Mr A Rasool.

In response to questions from P.C. J Evans, South Wales Police, Mr A Rasool confirmed that:

- i. Character checks in respect of the tenant sub-leasing the premises had been undertaken on his behalf by his Solicitor;

- ii. The tenant had moved into the premises in November 2013 and paid three months' rent in advance.
- iii. Rent was collected in person every month and paid in cash.
- iv. He would travel to Swansea to collect the rent but would not collect the rent from the tenant at the premises;
- v. He was not suspicious of the fact that rent was never collected at the premises;
- vi. He was in Swansea on 1 September, 2014 but did not enter the property.
- vii. He had received phone calls from the Police on 3 September, 2014 regarding the Police activity at the property and had gone into a panic.
- viii. He had no further communication with the Police regarding the matter until 23 September, 2014, twenty days after he first became aware of Police activity;
- ix. The tenant had intended to use the premises as a lap dancing club.

The Licensing Officer sought to address issues raised during Mr A Brian's statement.

He confirmed he had attempted to contact Mr A Brain on the mobile telephone number provided on 22<sup>nd</sup> September 2014. However, the mobile number had rung continuously and not connected to an answerphone facility, therefore he was unable to leave a message.

As the process had been instigated further notices had to be served. Papers had been served in respect of the meeting on 5 September, 2014. Further papers had been served on 22 and 26 September, 2014. The letter box at the premises was not functional as a result of expanded foam. The only means to successfully deliver the documents were through a gap between the two front entrance doors.

All correspondence was served at La Viva, 21 High Street, Swansea. There was no alternative address and Section 33 of the Licensing Act 2003 states that the Premises Licence Holder should notify the Local Authority of any change to the address.

In response to a Member question, the Licensing Officer confirmed that no communication had been received prior to the telephone message that was left on 19 September, 2014. No correspondence had been received from Mr A Rasool's solicitor in respect of the matter.

The Lawyer advising the Sub-Committee clarified the timescales associated with the three month suspension and advised that there had to be a final determination today being the 28<sup>th</sup> day and there is no facility to refer the matter back to the Sub-Committee. There was a statutory right of appeal and details would be provided in the notice of determination. Any Appeal would be considered by the Magistrates Court.

It was incumbent on Mr A Rasool, as Premises Licence Holder, to promote the Licensing Objectives in partnership with the Police and Local Authority.

Mr A Rasool had not spoken about his intentions to promote the Licensing Objectives and there were issues regarding the timescales in relation to him becoming aware of Police activity on 3 September, 2014 and his contact with Police

on 23 September, 2014. There had been no written representations from Mr A Rasool.

In order to be of assistance, the Lawyer advising the Committee stated that the Sub-Committee would need to be satisfied on a number of issues.

With regard to the Lease, it is very unlikely the City & County of Swansea would have given permission for Mr Rasool to occupy the premises without a written lease or agreement. However, that issue was not relevant to the decision to be made today .

The Sub Committee would need to be satisfied that Mr A Rasool was aware of his duties and responsibilities and detailed his proposals to ensure that the Licensing Objectives are promoted and partnership working is maintained with the Police and Licensing Authority in accordance with the statutory guidance. It was a matter for Mr Rasool to take this final opportunity to say how he intended to manage the premises going forward with a view to promoting the licensing objectives.

In response to questions from the Solicitor, Mr A Rasool confirmed that:

- i. He would promote the Licensing Objectives through the use of a letting agency who would monitor the premises. Mr A Rasool stated that he would also visit the premises personally;
- ii. He had suffered ill-health as a result of alcohol abuse from the period 2000 to 2010 when he decided to move to Yorkshire to be with his Mother. He detailed his ailments and stated that he had made a decision that he would focus on his health and forget about everything else in order to move forward.

In response to a question from the Chair, Mr A Rasool confirmed that he would travel to Swansea by train and walk through High Street.

In conclusion, the Solicitor advising Applicant stated that Mr A Rasool realised his short comings which were as a result of ill health. If the Lease continued he intended to address the issues with the Police and Local Authority in order to fulfil his obligations and refurbish the premises.

It was **RESOLVED** that the press and public be excluded from the meeting in accordance with paragraph 14 of the Licensing Act (Hearings) Regulations 2005, to enable the Sub-Committee to take legal advice.

**(CLOSED SESSION)**

Members discussed the issues relating to the application.

**(OPEN SESSION)**

The Lawyer advising the Sub Committee gave a brief overview of the legal advice tendered which included reference to the Statutory Guidance, policy and recent case law.

The Chair indicated that the Sub Committee had considered the representations made and the needs and interests of all parties in terms of the Council's Statement of Licensing Policy and the requirements of the Licensing Act 2003 and appropriate guidance and regulations.

Following the application for a summary review of the premises licence, the Sub-Committee **RESOLVED** that the Licence be **REVOKED** and that the interim steps of suspending the premises licence will continue until the determination of any appeal to the review decision.

### **Reason for Decision**

1. The Committee had regard to the Statutory Guidance in Section 182 (SG) as well as the Specialist Guidance (Guidance) for summary/expedited reviews and its policy.
2. The Committee was mindful of the SG 9.12 regarding the Police representations and information. The Committee attached more weight to the Police evidence that the premises was associated with serious crime and the value of the illegal product found at the premises being at or about £300,000.00 as this was not challenged by the Premises Licence Holder (PLH).
3. The Committee noted the Police representations that Mr A Rasool, the Premises Licence Holder (PLH), knew of an issue at the premises involving the police on or about 3<sup>rd</sup> September 2014, but no contact was made with the Local Authority until 19<sup>th</sup> September 2014 and no contact was made with the Police until on or about 22/23<sup>rd</sup> September 2014. In addition the contact was made by Mr A Brian representing himself only as a friend of the PLH and not the PLH himself or someone duly authorised to act on his behalf. The Committee accepted those facts as again they were not challenged by the PLH premises licence holder.
4. No explanation was provided by the PLH as to why even though he had been aware of a problem since 3 September 2014 and knew the actual issue since at least 19 September 2014, being the first contact with the Local Authority, no formal representations were made until today's hearing. The PLH's solicitor Mr Davies indicated he had only recently been instructed.
5. In light of the above the Committee considered the contact made was insufficient to try to address the serious issues arising at the premises with a view to promoting the Licensing Objective of the prevention of crime and disorder.
6. The Committee felt that the PLH's reasons for allowing the current situation to arise due to ill health were not reasonable in all the circumstances bearing in mind the obligations of a premises licence holder under the Licensing Act 2003.
7. The Committee noted the assertion by the PLH that he was not aware of the summary review procedure and had not received any of the communications

from the Local Authority until on or about the week commencing 15<sup>th</sup> September 2014 and that was why no contact had been made until 19<sup>th</sup> September 20/14. The committee accepted that the address provided by him on the transfer of the Premises Licence back in November 2013 (being La Viva) was the only address available to the Licensing Authority. The committee's view was that if the PLH was not at this address regularly and had only minimal involvement with the premises as he himself suggested, it was incumbent on him to provide a suitable alternative address to the Local Authority to make contact with him.

8. The Committee considered the PLH's proposals to address the promotion of the licensing objectives in the future were insufficient. The Committee did not agree, having regard to the nature of the operation that could take place at the premises under the licence and the PLH's intention to again sublet the premises, would provide the necessary level of management for such a premises and ensure the promotion of the Licensing Objectives.
9. The Committee was not satisfied from what had been said by the PLH and/or his representatives that he properly understood his duties and responsibilities as a premises licence holder and the need to promote the Licensing Objectives going forward.
10. Whilst not factoring it into their decision the Committee noted he had not considered whether he needed consent from the landlord for the works of installing a shutter to the premises and had not considered the position regarding planning permission.

The meeting ended at 11.40 am

**CHAIR**